

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO PROFESSIONAL LICENSING; PROVIDING LICENSING REQUIREMENTS FOR GENETIC COUNSELORS; PROVIDING FOR A DELAYED EFFECTIVE DATE; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "Genetic Counseling Act".

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that the mapping of the human genome continues to result in the rapid expansion of genetic knowledge and a proliferation of testing for genetic conditions. This has created a need for qualified professional genetic counselors to coordinate assessments, to deliver accurate information to families, to assist families in adjusting to the implications of their diagnoses and to help ensure that genetic information is used appropriately in the delivery of medical care.

B. The purpose of the Genetic Counseling Act is to protect the public from the unprofessional, improper, incompetent and unlawful practice of genetic counseling.

Section 3. DEFINITIONS.--As used in the Genetic Counseling Act:

A. "ABGC" means the American board of genetic counseling, a national agency for certification and

1 recertification of genetic counselors, or its successor
2 agency;

3 B. "ABMG" means the American board of medical
4 genetics, a national agency for certification and
5 recertification of genetic counselors and geneticists with
6 medical or other doctoral degrees, or its successor agency;

7 C. "board" means the New Mexico medical board;

8 D. "genetic counseling" means a communication
9 process that may include:

10 (1) estimating the likelihood of occurrence
11 or recurrence of any potentially inherited or genetically
12 influenced condition or congenital abnormality. "Genetic
13 counseling" may involve:

14 (a) obtaining and analyzing the
15 complete health history of an individual and family members;

16 (b) reviewing pertinent medical
17 records;

18 (c) evaluating the risks from exposure
19 to possible mutagens or teratogens; and

20 (d) determining appropriate genetic
21 testing or other evaluations to diagnose a condition or
22 determine the carrier status of one or more family members;

23 (2) helping an individual, family or health
24 care provider to:

25 (a) appreciate the medical,

1 psychological and social implications of a disorder,
2 including its features, variability, usual course and
3 management options;

4 (b) learn how genetic factors
5 contribute to a disorder and affect the chance for occurrence
6 of the disorder in other family members;

7 (c) understand available options for
8 coping with, preventing or reducing the chance of occurrence
9 or recurrence of a disorder;

10 (d) select the most appropriate,
11 accurate and cost-effective methods of diagnosis; and

12 (e) understand genetic or prenatal
13 tests, coordinate testing for inherited disorders and
14 interpret complex genetic test results; and

15 (3) facilitating an individual's or
16 family's:

17 (a) exploration of the perception of
18 risk and burden associated with a genetic disorder; and

19 (b) adjustment and adaptation to a
20 disorder or the individual's or family's genetic risk by
21 addressing needs for psychological, social and medical
22 support; and

23 E. "genetic counselor" means a person licensed
24 pursuant to the Genetic Counseling Act to engage in the
25 practice of genetic counseling.

1 Section 4. LICENSE REQUIRED.--Unless licensed as a
2 genetic counselor pursuant to the Genetic Counseling Act, a
3 person shall not:

4 A. engage in the practice of genetic counseling;

5 B. use the title or make any representation as
6 being a licensed genetic counselor or use any other title,
7 abbreviation, letters, figures, signs or devices that
8 indicate or imply that the person is licensed to practice as
9 a genetic counselor, including a genetic associate, gene
10 counselor or genetic consultant; or

11 C. advertise, hold out to the public or represent
12 in any manner that the person is authorized to practice
13 genetic counseling.

14 Section 5. EXEMPTIONS.--

15 A. Nothing in the Genetic Counseling Act is
16 intended to limit, interfere with or prevent a licensed
17 health care professional from practicing within the scope of
18 the professional license of that health care professional;
19 however, a licensed health care professional shall not
20 advertise to the public or any private group or business by
21 using any title or description of services that includes the
22 term "genetic counseling" unless the health care professional
23 is licensed under the Genetic Counseling Act.

24 B. The Genetic Counseling Act shall not apply to
25 or affect:

1 (1) a physician licensed under the Medical
2 Practice Act;

3 (2) a commissioned physician or surgeon
4 serving in the armed forces of the United States or a federal
5 agency; or

6 (3) an osteopathic physician licensed by the
7 board of osteopathic medical examiners.

8 Section 6. REQUIREMENTS FOR LICENSING.--The board shall
9 grant a license to practice genetic counseling to a person
10 who has:

11 A. submitted to the board:

12 (1) a completed application for licensing on
13 the form provided by the board;

14 (2) required documentation as determined by
15 the board;

16 (3) the required fees;

17 (4) an affidavit stating that the applicant
18 has not been found guilty of unprofessional conduct or
19 incompetence;

20 (5) satisfactory documentation of having
21 earned:

22 (a) a master's degree from a genetic
23 counseling training program that is accredited by the ABGC,
24 or an equivalent as determined by the board; or

25 (b) a doctoral degree from a medical

1 genetics training program that is accredited by the ABMG, or
2 an equivalent as determined by the board; and

3 (6) proof that the applicant is ABGC- or
4 ABMG-certified; and

5 B. complied with any other requirements of the
6 board.

7 Section 7. LICENSE RENEWAL.--

8 A. A licensee shall renew the licensee's genetic
9 counseling license biennially by submitting prior to the date
10 established by the board:

11 (1) the completed application for license
12 renewal on the form provided by the board; and

13 (2) the required fee for annual license
14 renewal.

15 B. The board may require proof of continuing
16 education or other proof of competence as a requirement for
17 renewal.

18 C. A sixty-day grace period shall be allowed a
19 licensee after the end of the licensing period, during which
20 time the license may be renewed by submitting:

21 (1) the completed application for license
22 renewal on the form provided by the board;

23 (2) the required fee for annual license
24 renewal; and

25 (3) the required late fee.

1 D. A genetic counselor's license not renewed at
2 the end of the grace period shall be considered expired, and
3 the licensee shall not be eligible to practice within the
4 state. For reinstatement of an expired license within one
5 year of the date of renewal, the board shall establish
6 requirements or fees that are in addition to the fee for
7 annual license renewal and may require the former licensee to
8 reapply as a new applicant.

9 Section 8. TEMPORARY LICENSE.--

10 A. The board may issue a temporary license to an
11 applicant who has met all licensure requirements except the
12 examination requirement. The temporary license is valid
13 until the results of the next scheduled examination are
14 available and a license is issued or denied. The temporary
15 license automatically expires if the applicant fails to take
16 the next scheduled examination, or upon release of official
17 examination results if the applicant fails the examination.

18 B. The board may issue a temporary license to a
19 person licensed in another state or country who:

20 (1) is in New Mexico temporarily to teach or
21 assist a New Mexico resident licensed to practice genetic
22 counseling; or

23 (2) met the requirements for licensure in
24 that state, which were equal to or greater than the
25 requirements for licensure in New Mexico at the time the

1 license was obtained in the other state.

2 C. The board shall not issue a temporary license
3 to a person who qualifies for the temporary license under
4 Subsection A of this section more than two consecutive times
5 within the five-year period immediately following the
6 issuance of the first temporary license.

7 D. A person practicing genetic counseling under a
8 temporary license shall be supervised by a licensed genetic
9 counselor or physician.

10 Section 9. FEES.--The board shall establish a schedule
11 of reasonable administrative and licensing fees, but an
12 individual fee shall not exceed four hundred dollars (\$400).

13 Section 10. CRIMINAL OFFENDER EMPLOYMENT ACT.--The
14 provisions of the Criminal Offender Employment Act shall
15 govern any consideration of criminal records required or
16 permitted by the Genetic Counseling Act.

17 Section 11. Section 61-6-5 NMSA 1978 (being Laws 1973,
18 Chapter 361, Section 2, as amended) is amended to read:

19 "61-6-5. DUTIES AND POWERS.--The board shall:

20 A. enforce and administer the provisions of the
21 Medical Practice Act, the Physician Assistant Act, the
22 Anesthesiologist Assistants Act, the Genetic Counseling Act
23 and the Impaired Health Care Provider Act;

24 B. adopt, publish and file, in accordance with the
25 Uniform Licensing Act and the State Rules Act, all rules for

1 the implementation and enforcement of the provisions of the
2 Medical Practice Act, the Physician Assistant Act, the
3 Anesthesiologist Assistants Act, the Genetic Counseling Act
4 and the Impaired Health Care Provider Act;

5 C. adopt and use a seal;

6 D. administer oaths to all applicants, witnesses
7 and others appearing before the board, as appropriate;

8 E. take testimony on matters within the board's
9 jurisdiction;

10 F. keep an accurate record of all its meetings,
11 receipts and disbursements;

12 G. maintain records in which the name, address and
13 license number of all licensees shall be recorded, together
14 with a record of all license renewals, suspensions,
15 revocations, probations, stipulations, censures, reprimands
16 and fines;

17 H. grant, deny, review, suspend and revoke
18 licenses to practice medicine and censure, reprimand, fine
19 and place on probation and stipulation licensees and
20 applicants in accordance with the Uniform Licensing Act for
21 any cause stated in the Medical Practice Act and the Impaired
22 Health Care Provider Act;

23 I. hire staff and administrators as necessary to
24 carry out the provisions of the Medical Practice Act;

25 J. have the authority to hire or contract with

1 investigators to investigate possible violations of the
2 Medical Practice Act;

3 K. have the authority to hire a competent attorney
4 to give advice and counsel in regard to any matter connected
5 with the duties of the board, to represent the board in any
6 legal proceedings and to aid in the enforcement of the laws
7 in relation to the medical profession and to fix the
8 compensation to be paid to such attorney; provided, however,
9 that such attorney shall be compensated from the funds of the
10 board;

11 L. establish continuing medical education
12 requirements for licensed physicians and continuing education
13 requirements for physician assistants;

14 M. establish committees as it deems necessary for
15 carrying on its business;

16 N. hire or contract with a licensed physician to
17 serve as medical director and fulfill specified duties of the
18 secretary-treasurer; and

19 O. establish and maintain rules related to the
20 management of pain based on review of national standards for
21 pain management."

22 Section 12. Section 61-6-15 NMSA 1978 (being Laws 1969,
23 Chapter 46, Section 6, as amended) is amended to read:

24 "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR
25 SUSPENDED--LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--

1 PROCEDURE--PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--
2 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND
3 EXPENSES.--

4 A. The board may refuse to license and may revoke
5 or suspend a license that has been issued by the board or a
6 previous board and may fine, censure or reprimand a licensee
7 upon satisfactory proof being made to the board that the
8 applicant for or holder of the license has been guilty of
9 unprofessional or dishonorable conduct. The board may also
10 refuse to license an applicant who is unable to practice
11 medicine, practice as a physician assistant or an
12 anesthesiologist assistant or practice genetic counseling,
13 pursuant to Section 61-7-3 NMSA 1978. All proceedings shall
14 be as required by the Uniform Licensing Act or the Impaired
15 Health Care Provider Act.

16 B. The board may, in its discretion and for good
17 cause shown, place the licensee on probation on the terms and
18 conditions it deems proper for protection of the public, for
19 the purpose of rehabilitation of the probationer or both.
20 Upon expiration of the term of probation, if a term is set,
21 further proceedings may be abated by the board if the holder
22 of the license furnishes the board with evidence that the
23 licensee is competent to practice, is of good moral character
24 and has complied with the terms of probation.

25 C. If evidence fails to establish to the

1 satisfaction of the board that the licensee is competent and
2 is of good moral character or if evidence shows that the
3 licensee has not complied with the terms of probation, the
4 board may revoke or suspend the license. If a license to
5 practice in this state is suspended, the holder of the
6 license may not practice during the term of suspension. A
7 person whose license has been revoked or suspended by the
8 board and who thereafter practices or attempts or offers to
9 practice in New Mexico, unless the period of suspension has
10 expired or been modified by the board or the license
11 reinstated, is guilty of a felony and shall be punished as
12 provided in Section 61-6-20 NMSA 1978.

13 D. "Unprofessional or dishonorable conduct", as
14 used in this section, means, but is not limited to because of
15 enumeration, conduct of a licensee that includes the
16 following:

17 (1) procuring, aiding or abetting a criminal
18 abortion;

19 (2) employing a person to solicit patients
20 for the licensee;

21 (3) representing to a patient that a
22 manifestly incurable condition of sickness, disease or injury
23 can be cured;

24 (4) obtaining a fee by fraud or
25 misrepresentation;

1 (5) willfully or negligently divulging a
2 professional confidence;

3 (6) conviction of an offense punishable by
4 incarceration in a state penitentiary or federal prison or
5 conviction of a misdemeanor associated with the practice of
6 the licensee. A copy of the record of conviction, certified
7 by the clerk of the court entering the conviction, is
8 conclusive evidence;

9 (7) habitual or excessive use of intoxicants
10 or drugs;

11 (8) fraud or misrepresentation in applying
12 for or procuring a license to practice in this state or in
13 connection with applying for or procuring renewal, including
14 cheating on or attempting to subvert the licensing
15 examinations;

16 (9) making false or misleading statements
17 regarding the skill of the licensee or the efficacy or value
18 of the medicine, treatment or remedy prescribed or
19 administered by the licensee or at the direction of the
20 licensee in the treatment of a disease or other condition of
21 the human body or mind;

22 (10) impersonating another licensee,
23 permitting or allowing a person to use the license of the
24 licensee or practicing as a licensee under a false or assumed
25 name;

- 1 (11) aiding or abetting the practice of a
2 person not licensed by the board;
- 3 (12) gross negligence in the practice of a
4 licensee;
- 5 (13) manifest incapacity or incompetence to
6 practice as a licensee;
- 7 (14) discipline imposed on a licensee by
8 another state, including denial, probation, suspension or
9 revocation, based upon acts by the licensee similar to acts
10 described in this section. A certified copy of the record of
11 suspension or revocation of the state making the suspension
12 or revocation is conclusive evidence;
- 13 (15) the use of a false, fraudulent or
14 deceptive statement in a document connected with the practice
15 of a licensee;
- 16 (16) fee splitting;
- 17 (17) the prescribing, administering or
18 dispensing of narcotic, stimulant or hypnotic drugs for other
19 than accepted therapeutic purposes;
- 20 (18) conduct likely to deceive, defraud or
21 harm the public;
- 22 (19) repeated similar negligent acts;
- 23 (20) employing abusive billing practices;
- 24 (21) failure to report to the board any
25 adverse action taken against the licensee by:

1 (a) another licensing jurisdiction;
2 (b) a peer review body;
3 (c) a health care entity;
4 (d) a professional or medical society
5 or association;
6 (e) a governmental agency;
7 (f) a law enforcement agency; or
8 (g) a court for acts or conduct similar
9 to acts or conduct that would constitute grounds for action
10 as defined in this section;

11 (22) failure to report to the board
12 surrender of a license or other authorization to practice in
13 another state or jurisdiction or surrender of membership on
14 any medical staff or in any medical or professional
15 association or society following, in lieu of and while under
16 disciplinary investigation by any of those authorities or
17 bodies for acts or conduct similar to acts or conduct that
18 would constitute grounds for action as defined in this
19 section;

20 (23) failure to furnish the board, its
21 investigators or representatives with information requested
22 by the board;

23 (24) abandonment of patients;

24 (25) being found mentally incompetent or
25 insane by a court of competent jurisdiction;

1 (26) injudicious prescribing, administering
2 or dispensing of a drug or medicine;

3 (27) failure to adequately supervise, as
4 provided by board rule, a medical or surgical assistant or
5 technician or professional licensee who renders health care;

6 (28) sexual contact with a patient or person
7 who has authority to make medical decisions for a patient,
8 other than the spouse of the licensee;

9 (29) conduct unbecoming in a person licensed
10 to practice or detrimental to the best interests of the
11 public;

12 (30) the surrender of a license or
13 withdrawal of an application for a license before another
14 state licensing board while an investigation or disciplinary
15 action is pending before that board for acts or conduct
16 similar to acts or conduct that would constitute grounds for
17 action pursuant to this section;

18 (31) sexual contact with a former mental
19 health patient of the licensee, other than the spouse of the
20 licensee, within one year from the end of treatment;

21 (32) sexual contact with a patient when the
22 licensee uses or exploits treatment, knowledge, emotions or
23 influence derived from the previous professional
24 relationship;

25 (33) improper management of medical records,

1 including failure to maintain timely, accurate, legible and
2 complete medical records;

3 (34) failure to provide pertinent and
4 necessary medical records to a physician or patient of the
5 physician in a timely manner when legally requested to do so
6 by the patient or by a legally designated representative of
7 the patient;

8 (35) undertreatment of pain as provided by
9 board rule;

10 (36) interaction with physicians, hospital
11 personnel, patients, family members or others that interferes
12 with patient care or could reasonably be expected to
13 adversely impact the quality of care rendered to a patient;

14 (37) soliciting or receiving compensation by
15 a physician assistant or anesthesiologist assistant from a
16 person who is not an employer of the assistant; or

17 (38) willfully or negligently divulging
18 privileged information or a professional secret.

19 E. As used in this section, "fee splitting"
20 includes offering, delivering, receiving or accepting any
21 unearned rebate, refunds, commission preference, patronage
22 dividend, discount or other unearned consideration, whether
23 in the form of money or otherwise, as compensation or
24 inducement for referring patients, clients or customers to a
25 person, irrespective of any membership, proprietary interest

1 or co-ownership in or with a person to whom the patients,
2 clients or customers are referred.

3 F. Licensees whose licenses are in a probationary
4 status shall pay reasonable expenses for maintaining
5 probationary status, including laboratory costs when
6 laboratory testing of biological fluids are included as a
7 condition of probation."

8 Section 13. Section 61-6-31 NMSA 1978 (being Laws 1989,
9 Chapter 269, Section 27, as amended) is amended to read:

10 "61-6-31. DISPOSITION OF FUNDS--NEW MEXICO MEDICAL
11 BOARD FUND CREATED--METHOD OF PAYMENTS.--

12 A. There is created the "New Mexico medical board
13 fund".

14 B. All funds received by the board and money
15 collected under the Medical Practice Act, the Physician
16 Assistant Act, the Anesthesiologist Assistants Act, the
17 Genetic Counseling Act and the Impaired Health Care Provider
18 Act shall be deposited with the state treasurer who shall
19 place the same to the credit of the New Mexico medical board
20 fund.

21 C. All payments out of the fund shall be made on
22 vouchers issued and signed by the secretary-treasurer of the
23 board or the designee of the secretary-treasurer upon
24 warrants drawn by the department of finance and
25 administration in accordance with the budget approved by that

1 department.

2 D. All amounts in the New Mexico medical board
3 fund shall be subject to the order of the board and shall be
4 used only for the purpose of meeting necessary expenses
5 incurred in:

6 (1) the performance of the provisions of the
7 Medical Practice Act, the Physician Assistant Act, the
8 Anesthesiologist Assistants Act, the Genetic Counseling Act
9 and the Impaired Health Care Provider Act and the duties and
10 powers imposed by those acts; and

11 (2) the promotion of medical education and
12 standards in this state within the budgetary limits.

13 E. All funds that may have accumulated to the
14 credit of the board under any previous law shall be
15 transferred to the New Mexico medical board fund and shall
16 continue to be available for use by the board in accordance
17 with the provisions of the Medical Practice Act, the
18 Physician Assistant Act, the Anesthesiologist Assistants Act,
19 the Genetic Counseling Act and the Impaired Health Care
20 Provider Act. All money unused at the end of the fiscal year
21 shall not revert, but shall remain in the fund for use in
22 accordance with the provisions of the Medical Practice Act,
23 the Physician Assistant Act, the Anesthesiologist Assistants
24 Act, the Genetic Counseling Act and the Impaired Health Care
25 Provider Act."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009. _____